Section 63.10 Regulatory classification of U.S. international carriers.

- (a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or nondominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to sections 63.11 and 63.13.
- (1) A U.S. carrier that has no affiliation with a foreign carrier in a particular country to which it provides service (i.e., a destination country) will presumptively be considered nondominant for the provision of international communications services on that route:
- (2) A U.S. carrier that has or acquires an affiliation with a foreign carrier that is a monopoly in a destination country will presumptively be classified as dominant for the provision of international communications services on that route: and
- (3) A U.S. carrier that has or acquires an affiliation with a foreign carrier that is not a monopoly in a destination country and that seeks to be regulated as nondominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks the ability to discriminate against unaffiliated U.S. carriers through control of bottleneck services or facilities in the destination country. Such a demonstration should address the factors that relate to the scope or degree of the foreign affiliate's bottleneck control, including those listed in section 63.01(r)(7).
- (i) For purposes of paragraph (a)(1)-(3) of this section. "affiliation" and "foreign carrier" are defined as set forth in Section 63.01(r)(1)(i & (ii), respectively.
- (4) A carrier that is authorized under this part to provide to a particular destination country a particular international communications service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as nondominant for the provision of the authorized service. The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in section 63.01(r)(1)(i), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."
- (b) Any party that seeks to defeat the presumptions in paragraphs (a)(1), (a)(2) and (a)(4) of this section shall bear the burden of proof upon any issue it raises as to the proper classification of the U.S. carrier.

Section 63.11 Notification required by U.S. international carriers that acquire an affiliation with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part that is, as of the effective date of this rule, affiliated with a foreign carrier, or that becomes affiliated with a foreign carrier after the date its authorization is granted, shall notify the Commission within ninety days of the effective date of this rule, or within ninety days of the acquisition of such interest, whichever occurs later. The certification shall state individually the country or countries in which the affiliated foreign carrier is authorized to provide telecommunications

- services offered to the public. It shall additionally specify which, if any, of the affiliated countries the U.S. carrier is authorized to serve under this part: what services it is authorized to provide to each such country; and the FCC File No. under which each such authorization was granted. For purposes of this section, "affiliation" and "foreign carrier" are defined as set forth in section 63.01(r)(1)(i) and (ii), respectively.
- (1) The carrier should also file, where applicable, a certified list of those routes for which it has an affiliation with a foreign carrier (as defined in section 63.01(r)(1)(i) & (ii)) but for which it provides a specified international communications service solely through the resale of the international switched or private line services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such an affiliation is defined as in Section 63.01(r)(1)(i), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."
 - (2) The carrier shall also submit with its notification:
- (i) the ownership information as required to be submitted pursuant to section 63.01(r)(2);
- (ii) where the carrier serves the affiliated route as a private line reseller, a certification as required to be submitted pursuant to section 63.01(r)(5); and
- (iii) a "special concessions" certification as required to be submitted pursuant to section 63.01(r)(3).
- (3) The carrier is responsible for the continuing accuracy of the certifications provided under paragraph (a) of this section. Whenever the substance of any certification provided under paragraphs (a)(1) or (a)(2)(ii) of this section is no longer accurate, the carrier shall as promptly as possible and in any event within 30 days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. This information may be used by the Commission to determine whether a change in regulatory status may be warranted under section 63.10. The carrier shall immediately inform the Commission if at any time the representations in the "special concessions" certification provided under paragraph (a)(2)(iii) are no longer true. See section 63.01(r)(3)(iii)
- (b) Unless the carrier filing under paragraph (a) of this section qualifies for the presumption of nondominant regulation pursuant to section 63.10(a)(4), it should submit the information specified in section 63.01(r)(7) to retain its nondominant status on any affiliated route.
- (c) The Commission will issue public notice of the submissions made under this section and, if it deems it necessary, the Commission will by written order at any time before or after the submission of public comments impose dominant carrier regulation on the carrier for the affiliated route based on the provisions of section 63.10.

Section 63.12 Streamlined processing of certain international resale applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under this part to acquire facilities through the resale of the international switched or private line services of another U.S. carrier shall be granted by the Commission 45 days after the date of public notice listing the application as accepted for filling.

- (b) Issuance of public notice of the grant shall be deemed the issuance of section 214 certification to the applicant, which may commence operation on the 46th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission.
- (c) The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:
- (1) the applicant has an affiliation, within the meaning of section 63.01(r)(4), with the U.S. facilities-based carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services); or
- (2) the applicant seeks authority to reself international private line services and a foreign carrier with which it has an affiliation within the meaning of section 63.01(r)(1)(i) & (ii) owns or controls telecommunications facilities in the country to which the applicant seeks authority to provide service (t.e., the destination country); or
- (3) the applicant seeks authority to resell international private line services to a country for which the Commission has not determined as of the date of public notice of the application that equivalent resale opportunities exist between the U.S. and the destination country; or
- (4) the application is formally opposed within the meaning of section 1.1202(e) of this chapter; or
- (5) the Commission has informed the applicant in writing, within 45 days after the date of public notice, that the application is not eligible for streamlined processing under this section.
- (d) Any complete application that is subject to paragraph (c) of this section will be acted upon only by formal written order of the Commission, and operation for which such authorization is sought may not commence except in accordance with such order.

Section 63.13 Streamlined procedures for modifying regulatory classification of U.S. international carriers from dominant to nondominant.

- (a) Any carrier that is authorized to provide an international communications service under this part and that was classified by the Commission as dominant for all international routes and services prior to the effective date of this rule due to the carrier's foreign ownership may apply to modify its regulatory status from dominant to nondominant for particular routes for the provision of international communications services in accordance with the provisions of this section.
- (1) Any such carrier may file a certified list of those routes it is authorized to serve for which it does not have an affiliation with a foreign carrier on the foreign end. For purposes of this paragraph, "affiliation" and "foreign carrier" are defined as in section 03.01(r)(1)(i) & (ii), respectively. The carrier shall file with its certified list the ownership information required by section 63.01(r)(2).
- (2) Any such carrier may also file a certified list of those routes for which it has an affiliation with a foreign carrier (as defined in section 63.01(r)(1)(i) & (ii)) but for which it provides a specified international communications service solely through the resale of the international switched or private line services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such

- an affiliation is defined as in section 63.01(r)(1)(i), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."
- (3) Any carrier filing a certified list pursuant to paragraph (a)(2) of this section that resells international private line services on a particular named route for the provision of a particular named service must also be able to certify, and so certify, that its foreign carrier-affiliate does not own or control telecommunications facilities on the foreign end of the route. For purposes of this paragraph, "telecommunications facilities" are defined as in section 63.01(r)(5).
- (4) Any carrier filing a certified list pursuant to paragraph (a)(2) of this section must also provide the "special concessions" certification as required to be submitted pursuant to section 63.01(r)(3).
- (5) Each carrier is responsible for the continuing accuracy of the certifications provided under paragraph (a) this section. Whenever the substance of any certification provided under paragraphs (a)(2) or (a)(3) of this section is no longer accurate, the carrier shall as promptly as possible and in any event within 30 days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. This information may be used by the Commission to determine whether a change in regulatory status on a particular route may be warranted under section 63.10. The carrier shall immediately inform the Commission if at any time the representations in the "special concessions" certification provided under paragraph (a)(4) of this section are no longer true. See section 63.01(r)(3)(ii).
- (b) Except as provided in paragraph (c) of this section, a complete application submitted pursuant to the provisions of paragraph (a) of this section shall be granted by the Commission 45 days after the date of public notice listing the application as accepted for filing, and the carrier filing such application may begin operating on the 46th day in accordance with the regulatory status proposed in its application and with all rules, regulations, and policies of the Commission. The Commission will subsequently issue a written order ratifying the modification of the carrier's regulatory status.
- (c) The streamlined processing procedure provided by paragraph (b) of this section shall not apply where:
- (1) the application is formally opposed within the meaning of section 1.1202(e) of this chapter: or
- (2) the Commission has informed the applicant in writing, within 45 days after the date of public notice, that the application is not eligible for streamlined processing under this section and must be supplemented as set forth in paragraph (d) of this section.
- (d) Any party that desires to modify its regulatory status from dominant to nondominant pursuant to paragraph (a) of this section, but that does not qualify for streamlined processing under this section, must request such modification by filing a petition for declaratory ruling, or by including such request in an application filed under this part requesting authority to provide service on the particular route for which such modification is desired. Any such filing should include the information specified in section 63.01(r)(7).

Section 63.14 Prohibition on Agreeing to Accept Special Concessions.

(a) Any carrier authorized to provide international communications service under this part that has an affiliation with a foreign carrier shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the U.S. and any foreign country served under the authority of this part and from agreeing to enter into such agreements in the future. For purposes of this section. "affiliation" is defined as in section 63.01(r)(1)(ii): "foreign carrier" is defined as in section 63.01(r)(1)(iii): and "special concession" is defined as in section o3.01(r)(3).

FOOTNOTES

- Regulation of International Common Carrier Services, Notice of Proposed Rule Making, 7 FCC Red 577 (1992) (Notice).
- ² This change in policy does not modify the dominant carrier status, for the provision of certain international services, of AT&T. Comsai, or U.S. carriers that provide international service for non-contiguous domestic points. See infra note 5.
- ¹ International Competitive Carrier, 102 FCC 2d 812 (1985), recon. denied, 60 RR 2d 1435 (1986) (International Competitive Carrier).
- 4 to 2 FCC 2d at 821. Unlike their nondominant competitors, foreign-owned U.S. carriers regulated as dominant must: obtain Commission approval before adding circuits on certificated routes: file cost support with their tariffs, which are effective only after 45 (as opposed to 14) days notice; and report quarterly (as opposed to annually) on traffic and revenues. See Notice, 7 FCC Rcd at 577, 578.
- The Commission, however, did streamline regulation for AT&T's provision of non-IMTS (generally, telex, telegraph, and private line service). Further, the Commission in 1989 adopted incentive (or price cap) regulation for AT&T's provision of IMTS. Under incentive regulation, AT&T generally need not cost support its IMTS tariff fillings, AT&T's IMTS tariffs may be filed on 14 days notice and are presumed lawful, provided they comply with our price cap rules. The only international tariffs that AT&T must submit with cost support on 45 days notice are those that implement a restructure or new service. We additionally note that we require AT&T to file its international traffic reports annually (not quarterly, as do the dominant, foreign-owned carriers).
- We defined as "foreign-owned" any U.S. carrier that is over fifteen percent directly or indirectly owned by a foreign telecommunications entity or on whose board of directors a representative of the foreign telecommunications entity sits. International Competitive Carrier. 102 FCC 2d at 842 n.74. We subsequently defined "foreign telecommunications entity" as including a telecommunications or telecommunications-related equipment manufacturer, equipment supplier, or service provider. See Regulatory Policies and International Telecommunications, Report and Order and Supplemental Notice of Inquiry, 4 FCC Rcd 7387, 7429 n.74 (1988).
 - International Competitive Carrier, 102 FCC 2d at 842.
- 8 Notice, 7 FCC Red at 580-81, 583, paras, 23-27, 40.
- We note that the scope of this Order is limited to addressing the question of how to regulate U.S. common carriers with foreign affiliations once they have been granted entry to the U.S. market. The Order does not address the question of entry standards for foreign-affiliated entities that apply for authority to operate in the U.S. market.

- 10 See generally Comments filed by NTIA, DOJ, CWCI, McCaw, IDB, Worldcom, TRICOM, and PAS, All parties that commented in this proceeding are listed in Appendix A. We grant DOJ's request to accept its late-filed repty comments because this would serve the public interest and no party would be prejudiced. We also include in the record as informal comments correspondence submitted to the Commission by USTR on April 17, and September 10, 1992.
- No commenter, other than BT, argues that we should eliminate dominant carrier regulation as a means of protecting U.S. carriers from foreign market power. See BT Comments at 1-8.
- 12 See generally AT&T Reply Comments and MCI Comments. See also NTIA Comments at 10-11. MCI also argues that the granting of additional operating agreements by foreign correspondents is not a proper basis for modifying our dominant carrier policy, because such action does not automatically translate into a competitive safeguard. MCI Comments at 8. However, our Notice recognized that encouraging the grant of multiple operating agreements, and discouraging market distortions through unequal interconnection and discrimination, were two independent reasons for imposing dominant carrier regulation on foreign-owned U.S. carriers in 1985. We tentatively concluded in the Notice, and here affirm, that the progress made to date in achieving the first of these objectives permits us to narrow the focus of our regulation to the second area of concern and impose dominant regulation on carriers to the extent their provision of service on particular routes presents a substantial possibility of anticompetitive effects on the U.S. international service market.
- 13 See AT&T Reply Comments at 5: Sprint Reply Comments at 4-7: NTIA Comments at 9.
- 14 Senators John C. Danforth and Bob Packwood submitted correspondence to the Commission on July 28, and October n. 1992 expressing similar concerns.
- 15 See Letter from Ambassador Carla A. Hills. United States Trade Representative, to Alfred Sikes, Chairman, FCC, dated September 10, 1992.
 - ¹⁶ Nouce, 7 FCC Red at 582-83, paras, 35-38,
- 1* See generally NTIA Comments at 6: DOJ Reply Comments at 14 n.19: McCaw Comments at 5: IDB Comments at 5: Worldcom Comments at 7-8: TRICOM Comments at 3-4.
 - 18 CWCI Comments at 10-12. AT&T Reply Comments at 11-14.
- 19 AT&T concedes that a U.S. carrier "is more likely to require a controlling interest to use the foreign carrier's position to its unique advantage." AT&T Reply Comments at 14 n.-4.
 - 20 DOJ Repty Comments at 14 n.19.
 - 21 See 47 C.F.R. Sections 43.51, 43.61, and 63.10(b) (1991).
 - 22 DOJ Reply Comments at 9 n. 15.
- 23 See AT&T Reply Comments at 13 n. (co-marketing arrangements should be outside the definition of affiliation).
- 24 Our affiliation standard does, however, include joint, ventures that are created to own and operate a foreign telecommunications property. See DOJ Reply Comments at 14.
- 25 CWCI additionally urges that we specifically include in our affiliation standard any contractual arrangement that may produce the opportunity and incentive for unlawful collusion between a U.S. and foreign carrier. However, our rules already provide us with an initial screening device to identify contractual arrangements that may raise competitive concerns. Section 43.51 of the rules, 47 C.F.R. Section 43.51 (1991), requires that all U.S. international carriers file certain contracts, including operating agreements and contracts that relate to the interconnection of international private lines, the interchange or routing of traffic, and matters concerning rates, accounting rates, or the basis of settlement of traffic balances. As CWCI observes, we have im-

posed our dominant carrier regulations on U.S. carriers because of such agreements. See CWCI Reply at 7-8 (citing FTC Communications, Inc., 4 FCC Rcd 5633 (Com. Car. Bur. 1989), recondenied, 5 FCC Rcd 3323 (Com. Car. Bur. 1990); US Sprint Communications Co., 3 FCC Rcd 1484 (Com. Car. Bur. 1988)). We will continue to do so when the public interest requires.

- ^{2h} As IDB observes, all U.S. international carriers already are required under Section 214 of the Act to assess the locus of control of their operations, and to examine new investments to assure that an unauthorized transfer of control of their carrier certifications does not occur. IDB Comments at 6. See also Notice, 7 FCC Rcd at 582, para. 35 n.30.
- ²⁷ NTIA Comments at 16-17. See also Worldcom Comments at 7.
- No carrier disputes our tentative conclusion that there is ample precedent setting forth the circumstances that constitute control. See Notice. 7 FCC Rcd at 582 n.30 (citing Rochester Tel. Corp. v. United States, 23 F. Supp. 034, 636 (W.D.N.Y. 1938), aff'd. 307 U.S. 125 (1939) (definition encompasses every form of control, actual or legal, direct or indirect, negative or affirmative); Benjamin L. Dubb. 16 FCC 274, 289 (1951); Intermountain Microwave, 24 RR 983, 984 (1963); Furner Broadcasting System, Inc., 101 FCC 2d 843, 848 (1985); William 5, Palev, 1 FCC Rcd 1025 (1986), recon, denied, 2 FCC Rcd 2274 (1987), aff'd sub nom, Fairness in Media v. FCC, 851 F.2d 1500 (D.C. Cir.) (per curiam), cert, denied, 488 U.S. 893 (1988)). In response to the request of PAS, we clarify that our definition of control includes both positive and negative control.
- The required certification and ownership information is set forth in Appendix B. Section 03.01(r). If, for purposes of evaluating an applicant's certification or qualifications to gain market access to the U.S., additional ownership information is necessary, we will request the further information.
- 30 See NTIA Comments at 17 n.35, See Nonce, 7 FCC Red at 582, para, 36.
- Our intent to include foreign market services and facilities that are used to deliver U.S. international traffic into the market, up to and including the international switch, and that are of the type that the Commission regulates as common carriage in the U.S. The Notice also requested comment on whether to extend our focus beyond the foreign international switch to include local and intercity access services and facilities, Id. at 581, paras, 29-31.
 - 32 NTIA Comments at 12-14.
- 33 AT&T Reply Comments at 12-13. AT&T states that, in its simplest form, a protected market position provides the affiliated U.S. carrier with access to a customer base in the foreign market that is not available to unaffiliated U.S. carriers. According to AT&T, access to this customer base is particularly important in the provision of private line and custom network services, where the protected foreign carrier directs its customers to its U.S. affiliate. Id. at 13.
 - 34 BT Reply Comments at 7.
 - 35 GTE Comments at 0-7.
 - in DOJ Reply Comments at 11-13; NTIA Comments at 14-15.
- ¹⁷ NTIA and DOJ specifically support our tentative conclusion that it is only affiliations with foreign providers of common carrier-type facilities and services that give rise to competitive concerns. NTIA Comments at 6: DOJ Reply Comments at 8.
- 38 See DOJ Reply Comments at 8, n.13. See also NTIA Comments at 14.
- ³⁰ We believe this framework, in conjunction with our affiliation standard, responds to the concerns of ATN that we evaluate each situation on its facts. See ATN Comments at 0-11. We also

note that ATN raises in this proceeding arguments that it raises in its Application for Review of the Common Carrier Bureau's Order, Authorization and Certificate in File No. 1-T-C-90-153, 6 FCC Red 6529 (1991). We will address ATN's arguments in the context of that Application for Review.

- ⁴⁰ We do not intend this list to be all-inclusive of the factors that a carrier may submit in support of its showing or that a party may advance in opposition. Thus, for example, the effectiveness of public regulation is but one factor that a carrier may address in its market power showing and which we will weigh against other factors in reaching our decision.
- Under our international private line resale policy, Regulation of International Accounting Rates. CC Docket No. 90-337, Phase II, First Report and Order, 7 FCC Red 559 (1991), recon. pending, we require that U.S. carriers seeking to resell international private line service on a particular route demonstrate that the foreign country affords resale opportunities equivalent to those available under U.S. law. See 47 C.F.R. Section 03.01(k)(5), U.S. carriers that resell private line service may choose to establish a foreign counterpart to market or otherwise manage operations on the foreign end. While the U.S. carrier's foreign counterpart may fall within our definition of an affiliated foreign carrier, there appears to be no substantial risk of discrimination against unaffiliated U.S. carriers where the foreign carrier-affiliate does not own any telecommunications facilities in the foreign market.
 - 12 See NTIA Comments at 14.
- ⁴³ McCaw supports creating a rebuttable presumption of nondominance for carriers covered by the third category whose foreign affiliates satisfy BT's proposed criteria. McCaw Reply Comments at 6-7.
- ¹⁴ We use the term "indirect transiting" to refer to the practice of switching U.S.-originating or -terminating traffic through one or more intermediate international exchanges. See Implementation and Scope of the International Scattements Policy for Parallel Routes, Order on Reconsideration. 2 FCC Red 1118, 1118 n.5 (1987), modified on further recon... 3 FCC Red 1614 (1988). Section 43.51(a)(2) of the rules, 47 C.F.R. Section 43.51(a)(2), requires the filing of all indirect transiting agreements with the Commission.
- Although the Commission has previously expressed refuctance to undertake such evaluations of foreign market conditions, it is far from clear that retaining the current policy and entertaining waivers from carriers for particular routes, as AT&T and MCI propose, would reduce the administrative burden or the complexity of the issues raised.
 - ⁴⁶ NTIA Comments at 13, n.27.
- To simplify the identification of these services and facilities in the context of a foreign market intrastructure, we adopt the classification used in the International Telecommunication Regulations: "telecommunication services offered to the public [and] the underlying international telecommunication transport means used to provide such services." Final Nets of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1. For purposes of applying our modified policy, we will refer to these services and facilities, which include intercity and local access services and facilities, as "telecommunications" services and facilities and to entities that are engaged in the provision of such services and facilities in foreign markets as "foreign carriers."
 - 48 Notice, 7 FCC Red at 583, para. 39
- Both AT&T and MCI note, inter alia, the potential for transiting agreements (see supra note 44) that could be used by a U.S. carrier's foreign affiliate to penefit unfairly the U.S. carrier in its service operations to third countries. AT&T Comments at 24, MCI Comments at 3-4.

- 30 CWCI Reply Comments at 40: IDB Reply Comments at 2-3: DOJ Reply Comments at 8-9, n. 14: McCaw Reply Comments at 5, n.11.
- 51 MCI specifically opposes AT&T's initial proposal that we create a rebuttable presumption of lesser regulation for affiliated carriers on unaffiliated routes, provided they submit a "no special concessions" certification. MCI Reply Comments at 4 n.12.
- 52 DOJ Reply Comments at 8-9 n.14; CWCI Reply Comments at
- 13 IDB Reply Comments at 4.
- 54 Because switched service resellers may serve particular destination markets that are not specifically listed in their Section 214 applications or authorizations, we require that such affiliated resellers certify in their applications that they will not accept special concessions with respect to any destination markets they may serve under the authority of their Section 214 authorizations.
- prohibit U.S. international carriers with foreign carrier affiliates from agreeing to accept special concessions. We do not find it necessary to expand the scope of the certification requirement to cover all U.S. international carriers, as IDB requests. The record in this proceeding establishes the existence of a heightened risk of anticompetitive consequences as a result of affiliated carrier operations. We in any event have on numerous occasions specifically prohibited U.S. international carriers from negotiating exclusive arrangements with foreign carriers or administrations and retain the authority to do so in particular authorizations. See, e.g., American Telephone and Telegraph Company, et al., File No. SCL-91-902, 7 FCC Red 134 (1992) (TAT-11 Cable Landing License).
- 56 The certification provided by an affiliated carrier will also assist the Commission in its evaluation of the carrier's qualifications to operate in the U.S. international service market.
- The Commission has stressed on numerous occasions the fundamental importance of truthfulness and complete candor on the part of applicants, as well as licensees, in their dealings with the Commission, occ. e.g., Atlantic City Community Broadcasting, Inc., o FCC Red 925, 927 (Rev. Bd. 1991) (citing Lebanon Valley Radio, Inc., 35 FCC 2d 243, 258 (Rev. Bd. 1972), review denied, 39 FCC 2d 1099 (1973), revid on other grounds sub nom. Lebanon Valley Radio, Inc. v. FCC, 503 F.2d 196 (D.C. Cir. 1984); FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946)). See also Pass Word, 673 F.2d 1363 (1982), cert. den., 459 U.S. 840 (1982) (common carrier revocation).
- 58 Nonce, 7 FCC Red at 582, para. 34.
- 59 GTE Comments at 5-6.
- These principles relate to parity nondiscrimination, uniform settlements, direct routing of traffic, movement towards cost-based accounting rates, and proportionate return traffic. Sprint Reply Comments at 3.
- McCaw defines such resellers as those that own no facilities. McCaw Comments at 11 n.26. See also British Embassy Comments at 3.
- ⁿ² CWCI Comments at 13 n.12. BT Comments at 7-9. See also McCaw Comments at 10-11.
- ⁿ⁾ We emphasize that all U.S. carriers, in their provision of international service, are subject to the requirement that the terms, conditions, and rates under which they provide service be publicly filed and made generally available to similarly situated customers. See Competition in the Interstate Interexchange Market-place, CC Docket No. 90-132, 6 FCC Rcd 5880 (1991); Cable & Wireless Communications, Inc., File No. 1-T-C-88-157, 7 FCC Rcd

- 4384 (Com. Car. Bur. 1992), pet, for clarification pending: Cable & Wireless Communications, Inc., File No. 1-T-C-92-409, DA 92-1354, released September 30, 1992.
- ⁶⁴ While there is some possibility that the foreign carrier may seek to discriminate in this manner, we agree with CWCI that the potential for whipsawing of a U.S. facilities-based carrier by a foreign carrier exists regardless of whether the foreign carrier has a U.S. resale affiliate. Although the incentive to engage in such behavior may be heightened where there is a U.S. resale affiliate, such behavior is directly monitored by our requirement that all U.S. international carriers file their contracts pursuant to Section 43.51.
 - ns See supra para. 27.
- on While this certification may not accomplish precisely the same objectives that Sprint seeks in requesting that the reseller's foreign affiliate certify to its compliance with certain Commission policies, our decision recognizes that our jurisdiction flows to the U.S. carrier, not to its foreign affiliate. See CWCI Reply Comments at 19-20.
 - " CWCl Comments at 13.
 - na Sue supra note 41.
- " Because the issue was not raised in the Notice, we will not revisit in this proceeding the Commission's decision in Internanonal Competitive Carrier, supra note 3, to divide the various international service offerings into two product markets; international message telephone service (IMTS) and non-IMTS (generally, telex, telegraph, and private line services. But see DOJ Reply Comments at 4 n.h. We also decline to revisit our 1985 decision to include non-IMTS services within our dominant carrier policies. GTE opposes the inclusion of non-IMTS on the basis that the central focus of the Notice is on IMTS and that foreign entities in general are very willing to deal with multiple U.S. carriers in the provision of non-IMTS. See also IDB Reply Comments at 7. GTE has not demonstrated to our satisfaction that there is no substantial possibility of foreign carrier discrimination against unaffiliated U.S. carriers in the provision of facilities and services used to terminate U.S. non-IMTS traffic.
 - ⁷⁰ Nonce, 7 FCC Red at 581, 583, paras, 26, 40,
- NTIA Comments at 18: British Embassy Comments at 2: BT Comments at 9: 16-18: CWCI Comments at 6: 1DB Reply Comments at 11-12: McCaw Reply Comments at 7. See also MCI Reply Comments at 0 n.18. Worldcom also supports adoption of a streamtined grant procedure but urges that in doing so we not delay resolution of the core issues in this proceeding. Worldcom Reply Comments at 7.
 - 22 AT&T Comments at 20-23; AT&T Reply Comments at 6-7.
- 73 CWCI Reply Comments at 17-18.
- ** Sprint Reply Comments at 4-7.
- This procedure will be similar to those the Commission has adopted for processing requests to register domestic receive-only satellite earth stations and to waive our International Settlements Policy. See 47 C.F.R. Sections 25.131(e) and 64.1001 (f)(1991). See also 47 C.F.R. Section 64.1001(h) (carrier notification procedure for simple reductions in accounting rates).
- The We include in this class of applications those that seek authority to transfer control of an international resale entity or assign the international Section 214 authorizations of a resale entity.
- We note that these streamfined procedures are consistent with this Commission's approach to evaluating a carrier's qualifications to participate in the U.S. international service market. Streamfined processing will not apply to facilities-based appli-

cants; nor will it apply to private line resellers seeking to serve countries where there has been no finding of equivalent resale opportunities.

- ⁸ See 47 C.F.R. Section 1.1202(e), which sets forth the requirements for formal oppositions.
 - 29 See comments cited supra note 71.
 - 80 BT Comments at 9-10.
- 81 See Cable & Wireless Communications, Inc., File Nos. 1-T-C-92-065 (application for Section 214 authority to acquire and operate facilities to the United Kingdom and beyond) and 1-T-C-92-066 (application for Section 214 authority to acquire and operate facilities to Hong Kong and beyond): Telefonica Larga Distancia de Puerto Rico and LD Acquisition Corp., File No. 1-T-C-92-116-TC (application for authority to transfer certificates of public convenience and necessity and amend submarine cable landing license).
 - 42 Nouce, 7 FCC Red at 583, para, 41.
 - 83 See CWCI Comments at 16-17.
- 84 BT Comments at 10-15. Reply Comments at 2-8; British Embassy Comments at 2: McCaw Comments at 7-8, Reply Comments at 8.
 - 45 Sprint Reply Comments at 7-8.
 - 8n CWCI Reply Comments at 5, n.3, Comments at 15,
 - 8 AT&T Reply Comments at 15-23.
- 38 MCI Reply Comments at 8-9.
- Worldcom Comments at 9-10: McCaw Reply Comments at 7. Worldcom filed in conjunction with its comments in this proceeding a Request for Immediate Interim Relief from our dominant carrier policies and rules. See File No. I-S-P-89-405(A). Worldcom initially filed in 1989 a petition for declaratory ruling that it is not a dominant carrier, or alternatively, for waiver of the dominant carrier rules. Worldcom Comments at 2.
- We also decline to adopt BT's suggestion that we permit a foreign carrier to petition the Commission for a declaratory ruling as to its regulatory status without having to disclose the nature of any intended service. BT Comments at 17. As we stated supra para, 21, we believe that a foreign carrier's ability to discriminate in favor of its U.S. affiliate may depend upon the service its U.S. affiliate intends to provide. See also supra para, 33. We understand a carrier's desire to maintain confidentiality in certain aspects of its operations, particularly in the planning stages of a new service. However, all U.S. carriers are required to identify under Section 03.01 of the Rules the classification of the service they intend to provide, and the classification carriers use are generic as compared to the particular manner in which these services ultimately are provided.
- ⁹¹ We will subsequently issue a formal written order to ratify the modification.
- "2 We require that carriers report their acquisitions, and provide the "no special concessions" certification, regardless of whether they provide U.S. international service to the market in which their affiliate operates. We will permit carriers that have acquired an affiliated interest prior to the effective date of the Report and Order to submit their notification within ninety days of the effective date.
- ⁴³ Any carrier that is authorized to resell private line services in the U.S. and that has notified the Commission of the existence or acquisition of a foreign affiliation is under a continuing obligation to notify the Commission if and when a foreign affiliate subsequently acquires ownership or control of telecommunications facilities in a market served by the U.S. resale carrier. This information will enable the Commission to determine whether a change in regulatory status on a particular route may be warranted. Similarly, any carrier that is authorized to resell switched

or private line services in the U.S. is under a continuing obligation to maintain the accuracy of its certification regarding whether or not the resale carrier is affiliated with a U.S. facilities-based carrier whose services it is resetting. See supra para, 40.

We anticipate that this notification requirement will provide us with the information we need to determine whether to modify a carrier's regulatory status on a particular route, including a route served under a blanket authorization for multiple routes. Contrary to the concerns expressed by GTE Spacenet (see Comments at 4), the fact that a carrier's regulatory status on one such route may be subject to modification in no way suggests that the carrier's blanket authorization may become invalid.

SEPARATE STATEMENT OF COMMISSIONER JAMES H. QUELLO

RE: Regulation of International Common Carrier Services (CC Docket No. 91-360)

I am concurring with the majority in adopting this item. Today, the Commission is adopting a regulatory approach for classifying international carriers as either dominant or non-dominant. The route-by-route approach contained in this item should also be applied to AT&T, and I would have expanded the scope of this Order to cover AT&T. Pursuant to today's Order, foreign owned carriers operating in the U.S. can be regulated as non-dominant, while AT&T remains regulated as dominant. It is important to ensure that all carriers competing in the marketplace are provided with the opportunity to compete on a level playing field. I am also concerned that this item could increase the Commission's burden in reviewing complexed cases concerning whether individual foreign carriers have market power. In addition, it raises serious questions regarding the Commission's ability to enforce our regulations. I concur in this item with the understanding that the regulatory classification of specific countries and individual carriers will be subject to full Commission review.

JOINT STATEMENT OF COMMISSIONER SHERRIE P. MARSHALL AND COMMISSIONER ERVIN S. DUGGAN

Re: Regulation of International Common Carrier Services (CC Docket No. 91-360, RM-7578)

We are voting for this item for only one reason: its scope is so narrow that it should not hamstring U.S. negotiations on larger international telecommunications issues. Today's decision simply implements an improved regulatory scheme for determining whether an international common carrier operating within the U.S. should be regulated as dominant or nondominant. It does not address the question of under what circumstances foreign-owned carriers may be granted entry into the U.S. market. In short, this decision simply takes care of the regulatory details that will follow the larger, and much more significant, market entry question.

U.S.-owned international carriers and the United States Trade Representative have urged in this proceeding that the FCC not adopt regulatory policies that would undermine U.S. efforts to open foreign telecommunications markets to U.S. carriers. We share those concerns. Indeed, we would not support a decision that in any way limited the

possible negotiating positions of the U.S. in its efforts to open foreign markets. Therefore, we emphasize that today's decision does not implicate market entry standards for foreign carriers. Rather, the Order merely implements a uniform regulatory scheme the FCC can apply to all international carriers if and when they are granted entry into the U.S. market.

A concrete example should clarify the very limited scope of today's decision. Suppose a private line reseller from a foreign country seeks authority to provide services between the U.S. and its home country. The Commission's December 1991 International Resale Order sets forth the U.S. market entry standards that govern a foreign private line reseller's ability to enter the U.S. marketplace. Specifically, equivalent resale opportunities for U.S. carriers must exist in the foreign market in order to grant the foreign carrier access to the U.S. market. If such equivalent market opportunities exist and if the foreign carrier is otherwise qualified to be a Commission licensee, then, and only then, is the FCC confronted with the issue of how to regulate the foreign carrier. Today's decision establishes the rules as to how the carrier would be regulated -- either as a dominant or nondominant carrier - in our market. Of course this decision does not address, nor should it, the question of appropriate market entry standards for foreign facilitiesbased carriers.

We are eager to eliminate all unnecessary regulatory burdens borne by foreign-owned international carriers, as well as unnecessary burdens imposed on the FCC itself. Most foreign countries, however, have not yet liberalized and privatized their own telecommunications markets, and competitive opportunities for U.S. companies abroad remain limited. Further, accounting rates with foreign telephone administrations continue to be extremely high. Indeed, despite our best efforts to the contrary, the total 1991 U.S. international settlement payments — payments financed by U.S. businesses and consumers — increased by 21% over 1990 levels. Even worse, the 1992 settlement payment is expected to increase to more than \$4 billion.

We remain committed to a regulatory course that will spur competition and reduce costs in the international telecommunications marketplace. Already the U.S. has the most open and advanced telecommunications market in the world. But the U.S. controls only one end of the communications pipeline. Therefore, absent concerted deregulatory efforts abroad, we believe it is unwise and antithetical to the public interest to further streamline or in any way modify entry standards for foreign-owned international carriers seeking access to the U.S. market.